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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,993	03/04/2002	Stanley G. Wright	01377-0001	8846

7590 07/15/2003

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 07/15/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/090,993

Applicant(s)

WRIGHT, STANLEY G.

Examiner

Josiah C. Cocks

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Priority*

1. Applicant's claim for domestic priority under 35 U.S.C. § 120 is acknowledged.

### *Drawings*

2. The drawings filed with the application on 3/4/02 are accepted by the examiner.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Rogers* (US # 4,471,757) in view of *Truran* (US # 4,280,475).

*Rogers* discloses in Figures 1-6 a fireplace grate assembly and method substantially as described by applicant including a grate (19) for supporting a log wherein the grate includes legs extending downwardly therefrom (see Fig. 3) and an accessory (18) positioned on top of the grate (19), the accessory comprising two parallel elongate members (side members of 18) spaced apart by multiple connecting member (see connecting members on top and bottom of 18 in Figs. 1 and 2).

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In regard to claims 4 and 6-8, *Rogers* shows a metal accessory member for a grate that functions for the same purpose as applicant's accessory to hold a log above the grate member. To have selected a specific material, such as steel stock, a specific size and spacing for the connecting members, and known means of joining metal members, such as welding, would be simply a matter of optimizing the material, size, and connecting means of the prior art accessory member of *Rogers* to effectively function as a accessory holder, and such optimization would be obtainable through routine experimentation and is not regarded as patentably distinct (see MPEP § 2144.05 (II)(A)).

In regard to claim 11, it would be inherent that a synthetic firelog could be used in place of the log (21) shown in *Rogers*.

*Rogers* does not specifically show that the grate (19) includes substantially parallel spaced bars for supporting a log. However, it is well known in the art that fireplaces grates are formed of substantially parallel spaced bars. *Truran* is cited to show this standard grate structure. *Truran* teaches a fireplace grate (10) and accessory in the same field of endeavor as *Rogers* wherein the grate of *Rogers* includes parallel spaced bars (see Fig. 5)

Therefore, in regard to claims 1-17, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the grate of *Rogers* to include parallel spaced bars as shown in *Truran* as this structure is recognized in the art as desirable and conventional construction for supporting a log in a fireplace (see *Truran*, col. 2, 16-25).

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***Conclusion***


5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. *Bissell, Peterson et al., Thomas, George, Newman, Freemon*, and GB 152,180 are included to further show the state of the art concerning fireplace grate and accessory structure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached at (703) 308-0101. The fax phone numbers for this Group are (703) 308-7764 for regular communications and (703) 305-3463 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
July 14, 2003

  
JOSIAH COCKS  
PATENT EXAMINER  
ART UNIT 3743